

SUBPART 3-BUREAU OF PLANT INDUSTRY
 CHAPTER 11- Regulation of Professional Services
 SUBCHAPTER 04- Regulations Governing Landscape Gardening Horticulturist
Definitions

- 400 For the purpose of these regulations, the following words, names and terms shall be construed within the meaning and purpose of MISS. CODE ANN. §§ 69-19-1 to -11.
1. "Act" shall mean MISS. CODE ANN. §§ 69-19-1 to -11.
 2. "Bonafide Employee" shall be a person who receives all or part of his salary, pay or commission from a license holder and whose salary, pay or commission is regularly reported under Federal Social Security and/or income tax laws.
 3. "Bureau" shall mean the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce created under the provision of Section 69-25-3, Mississippi Code 1972.
 4. "Executive Secretary and/or State Entomologist" shall mean the executive secretary and director and/or state entomologist of the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce as set forth in Section 69-25-5, Mississippi Code 1972.
 5. "Horticulturist and/or floriculturist" shall mean a person, receiving fees for landscaping and setting of plants, or for the sale of any plants for which the seller contracts to render future services.
 6. "Licensed operator" shall mean the person who shall be responsible for fulfillment of all services to be rendered by a company licensed to perform professional services covered by these regulations.
 7. "Person" shall mean any individual, partnership, corporation, association, company or organized group of persons whether incorporated or not.
 8. "Professional Services" shall mean any of the professional services performed as designated by the category listed under subsection 403.02 of this chapter.

Persons Required to Secure License

- 401 Horticulturist and/or floriculturists must secure a license from the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce in accordance with Section 69-19-9, Mississippi Code 1972. No person shall advertise in any manner to render professional services or solicit business within the meaning of the Act without first obtaining a license.

License Application; Qualifications

- 402 Application for license shall be submitted on a regular form furnished by the Bureau, in time to be approved ten (10) days prior to regular scheduled examinations. ~~The applicant shall furnish names of several references as to his character and a satisfactory credit report.~~ No application for a license shall be

accepted unless the applicant shall furnish written proof that he meets one (1) of the following requirements:

1. must be graduated from ~~a recognized~~ an accredited college or university with at least 15 semester hours or the equivalent in the field for which he is requesting a license.
2. must have not less than two (2) years college or university training with special-training in the field for which he is requesting a license,
3. must be at least a high school graduate, and have had, in addition, at least one (1) year's experience with a licensed operator within the past two (2) years; or
4. if the applicant does not have a high school education or its equivalence, he must be able to furnish proof that he has had at least two (2) year's experience with a licensed operator within the past three (3) years.

Examinations; License Categories

403.01 Each person required to secure a license in accordance with the Act shall be examined as follows: When the firm is under control of one person who is solely responsible for the work, this person alone shall be required to pass the examination. When more than one person is responsible, then each shall be required to pass the examination. A person may designate an employee who is regularly and actively in charge to take the examination and the license will be issued naming the employee as supervisor. Both the employee and the person to whom the license is issued will be held responsible for the professional services rendered.

403.02 The applicant shall take an examination which shall be written and, in general, cover the subject of the professional services designated in the application. The examination may be waived if the applicant is already licensed to perform the same professional services in a state which standards equal to those of Mississippi, and provided further that said state recognizes such examinations given by Mississippi; or if he is licensed as a landscape architect in Mississippi in accordance with Section 73-2-1 through 73-2-25, Mississippi Code 1972.

403.03 Examination dates: Examinations shall be given once each quarter at Mississippi State, Mississippi. The dates for written examinations shall be the second Tuesday in each quarter of the calendar year. Applicants not passing the examination may take it on the next regularly scheduled examination date.

403.04 Category in which the examination is given and for which a license will be issued: Horticultural and floricultural work - "Landscape ~~Gardening~~ Horticulturist" - This category includes persons engaged in advertising landscaping services ~~or drawing landscaping planting designs~~ and setting plants for which the seller contracts or agrees to render future services.

Plant Act Compliance

- 404 No license will be issued to a person to practice the professional services defined in Section 69-19-5 of the Act unless the provisions of Sections 69-25-1 through 69-25-47, Mississippi Code 1972 have been complied with relative to horticultural and/or floricultural plants and plant products being moved and sold under proper certificate tags issued by the Bureau.

Issuance of License

- 405.01 If the qualifications and other requirements of the applicant are satisfactory, the Bureau shall then require that the applicant furnish bond in the proper amount as set forth in section 407 of this chapter in conformity to Section 69-19-9, Mississippi Code 1972. The Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce shall then issue a license which shall expire three (3) years from date of issuance unless suspended or revoked for cause, ~~PROVIDED, that no license shall be issued any person who fails to disclose to the Bureau materials and methods used in his practice, or who uses any material or method which has not been approved by the Bureau.~~
- 405.02 A license is not transferable. When there is a change in the status of a license holder due to uncontrollable circumstances, a reasonable period of time shall be allowed for a qualified person to meet the requirements of section 401 of this chapter.
- 405.03 A license shall expire three (3) years from date of issuance; renewal shall be on a form provided by the Bureau. Failure of the licensee to notify the Bureau of an address change will invalidate the license.

Denial, Suspension Or Cancellation of a License

- 406.01 The commissioner with the approval of the advisory board may suspend for not more than thirty (30) days, and then after opportunity for a hearing may deny, suspend, cancel or modify the provisions of any license issued under the Act if he finds that the applicant or licensee has committed any of the following applicable to him, each of which is declared to be a violation of the Act and these regulations.
1. Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used;
 2. Operated in a faulty, careless or negligent manner or knowingly operated faulty or unsafe equipment in a manner as to cause damage to property or person;
 3. Refused, or after notice, neglected to comply with the provisions of the Act, the regulations adopted hereunder, or any lawful order of the commissioner;
 4. Refused or neglected to keep and maintain records required by the Act or to make reports when required;
 5. Made false or fraudulent records, invoices or reports;

6. Used fraud or misrepresentation in making application for a license or renewal;
7. Aided or abetted any person in evading the provisions of the Act;
8. Allowed one's license to be used by an unlicensed person;
9. Impersonated any state or federal official;
10. Misrepresented for the purpose of deceiving or defrauding;
11. Made a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their detriment;
12. Performed work in a category covered by the Act for which the licensee does not hold a license;
13. Repeated inspections by inspectors of the Bureau of Plant Industry reveal that the license is not performing services in a satisfactory manner;
14. Failed to register agents or solicitors ~~within the time specified in these regulations;~~
15. Convicted in any of the courts of this state of a violation of the Act or these rules and regulations;
16. Failed to correct substandard work; or
17. Failed to renew the bond that is required in section 407 of this chapter.

406.02 Any person who is denied a license or whose license is suspended, canceled or modified by the commissioner shall be afforded an opportunity for a fair hearing before the advisory board in connection therewith upon written application to the commissioner within thirty (30) days after receipt of notice from the commissioner of such denial, suspension, cancellation or modification. The commissioner shall set a time and place for such hearing and shall convene the board within ten (10) days following receipt of the written application for a hearing. The board shall receive evidence and affirm, modify, or reverse the determination of the commissioner within five (5) days.

406.03 Any person aggrieved by the determination of the board may petition the Chancery Court of the county of residence of such person, or the Chancery Court of Hinds County, for a review with supersedeas. The chancellor shall grant a hearing on said petition and may grant such review with supersedeas; the application may be required to post bond with sufficient sureties in an amount to be determined by the chancellor. Upon the review of any such decision, additional evidence may be received and considered but any record made or evidence heard before the board or commissioner may be submitted. Any such petition by either party from the determination of the chancellor shall proceed as otherwise provided by law.

406.04 A license shall automatically become invalid should the licensed operator whose name appears on the license, cease to personally supervise, and be in direct charge of operations and shall remain invalid until some other person, having been examined in accordance with these rules and regulations becomes certified as the licensed operator in his stead; except as provided for in section 404 of this chapter.

- 406.05 When a license has been canceled, the licensee shall be notified in writing. If the licensee is bonded, the bonding company shall be notified of the action taken, but revoking a license shall in no way invalidate the bond for the duration of the contract entered into by the licensee.

Bond

- 407.01 The bond furnished the Bureau by any licensee, as provided in Section 69-19-9, Mississippi Code 1972, shall be conditioned so as to insure to the purchaser of services from said licensee the fulfillment of any contract or guarantee made by the licensee. No surety bond shall be accepted except from companies approved by the Insurance Department of Mississippi.
- 407.02 Persons engaged in horticultural and floricultural work (landscaping and setting of plants) may be exempt from bond requirements unless such person contracts or agrees to render future service.
- 407.03 An annual bond of \$1,000 shall be required of any person who shall guarantee his work or contract to render service, and said bond shall be conditioned as to be valid and effective for the maximum time for which the licensee shall issue guarantees or contracts to render future service.

Inspections; Records; Reporting; Contracts

- 408 Licensed operators shall keep complete and accurate records of all work performed including copies of contracts issued for at least two (2) years. Such records shall be available for examination by employees of the Bureau during reasonable business hours. Such records shall include location, kind of services performed, date performed, materials used if there be any, ~~the amount and strength~~ and such other information as may be necessary for a complete record.

Identification; Operators; Employees; Equipment

- 409.01 Operators - All operators or owners ~~in the landscape designing business~~ engaged in soliciting horticultural and floricultural work or dealing with the public must be provided with an identification card, to be obtained from the Bureau of Plant Industry. The licensee shall submit an I.D. card application provided by the Bureau.
- 409.02 Employees –
1. All employees of licensed operators, who solicit business or otherwise represent the operator in dealing with the public, must be provided with an identification card to be obtained from the Bureau. An employee of an operator considered as a laborer shall have an I.D. card or be accompanied by

an employee who holds a valid I.D. card. ~~A recent picture of the employee shall be permanently attached to the I. D. card.~~

2. The operator shall submit an I.D. card application provided by the Bureau requesting in writing, I.D. cards for his employees and himself, ~~enclosing a picture of each person.~~
3. When an operator or his employee resigns or is discharged, the licensee ~~his I.D. card shall be returned~~ shall return the I.D. card to the Bureau for cancellation.
4. The I.D. card shall be in the possession of the operator and his employee at all times, when performing or soliciting business and will be presented on request to the person or persons for whom business is performed or solicited.
5. An I. D. card will not be issued to any person who has been employed by another operator until his previous card has been returned to the Bureau for cancellation.

409.03 Equipment - All vehicles and mobile equipment ~~except private passenger automobiles used by persons~~ engaged in professional services covered by the Act and these regulations shall be marked for easy identification.

Bonafide Employee

- 410 Services or work performed under any section of these regulations must be performed only by the licensee or his bonafide employee.

Exemptions

- 411 Persons licensed under the "Mississippi Landscape Architectural Practice Law" are exempt from the examination requirement of subsection 403.01 of this chapter.

Effective Date

- 412 These regulations are effective following approval by the Bureau of Plant Industry Advisory Board, adoption by the Commissioner and filing with the Secretary of State.

(Subchapter 04 adopted March 29, 1977; amended September 18, 1979; May 13, 1994; and May 12, 1995.)